

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JIMMY HARRIS,)	
)	
Plaintiff,)	C.A. No.
)	
vs.)	
)	<u>NOTICE OF REMOVAL</u>
BURLINGTON COAT FACTORY and)	
URBAN EDGE PROPERTIES,)	
)	
Defendants)	

Defendant, Burlington Coat Factory of Texas, Inc. (incorrectly identified in the caption as “Burlington Coat Factory”), hereby removes this civil action bearing Index No. 15327622/2022 from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §1446 and 28 U.S.C. §1332.

1. Plaintiff, Jimmy Harris, (“Plaintiff”), commenced this action in the Supreme Court of the State of New York, County of New York by filing a Civil Action Complaint (“Complaint”) on or about April 13, 2022. A copy of the Complaint is attached hereto as Exhibit “A” without admission or adoption.

2. Plaintiff’s Complaint filed in the Supreme Court of the State of New York, County of New York, with Index No. 15327622/2022 was directed against Defendants, Burlington Coat Factory and Urban Edge Properties.

3. Plaintiff seeks to recover damages for severe and permanent injuries allegedly caused by a defective and malfunctioning escalator at the Burlington Coat Factory Store located at 2500 Central Park Avenue in Yonkers, New York. (*See* Exhibit “A”).

4. The Plaintiff is a resident of the County of Westchester, State of New York. *See*

Exhibit “A”).

5. Plaintiff’s current address is 121 S. Riverside Avenue, Croton on Hudson, New York (Westchester County) and he has lived at that address since 2018, according to “PeopleMap Report (Premier)” provided by WESTLAW (Thompson Reuters).

6. Phone numbers associated with the Plaintiff include multiple phone numbers with area code “914” which are all phone numbers issued in the State of New York, (typically for Westchester County), according to “PeopleMap Report (Premier)” provided by WESTLAW (Thompson Reuters).

7. Plaintiff’s Social Security Number, XXX-56-XXXX, was issued in the State of New York between 1975 and 1976, according to “PeopleMap Report (Premier)” provided by WESTLAW (Thompson Reuters).

8. For diversity purposes, it is well-established that the citizenship of an individual is equivalent to his or her domicile. Yonofsky v. Wernick, 362 F. Supp. 1005 (S.D.N.Y. 1973); Broadstone Realty Corp. v. Evans, 213 F. Supp. 261, 265 (S.D.N.Y. 1962). Domicile is defined by residence in fact along with the intent to remain there or to return when absent. Kaufman & Broad v. Gootrad, 397 F. Supp. 1054, 1055 (S.D.N.Y. 1975). An individual’s residence at the time a lawsuit is commenced provides *prima facie* evidence of their domicile. Broadstone Realty Corp. v. Evans, 213 F. Supp. 261, 265 (S.D.N.Y. 1962). Domicile must be established by the totality of the evidence of a person’s contacts with the state and intent to remain there. See, e.g., supra., Broadstone Realty Corp. v. Evans, supra.

9. Based on the totality of Plaintiff’s aforementioned contacts with the State of New York, Plaintiff is a citizen of the State of New York.

10. Defendant, Burlington Coat Factory of Texas, Inc., is a foreign corporation organized and existing under the laws of the State of Florida, and has its principal place of

business located at 1830 Route 130 North, Burlington, New Jersey 08016. Defendant, Burlington Coat Factory of Texas, Inc. is a citizen of the State of Florida and the State of New Jersey is not a citizen of the State of New York.

11. Defendant Urban Edge Properties is a Maryland Real Estate Investment Trust, organized and existing under the laws of the State of Maryland. According to public information available at the Maryland Secretary of State's website, Urban Edge Properties' principal place of business is located at 2405 York Road, Suite 201, Lutherville Timonium, MD 21093-2264. Defendant, Urban Edge Properties, is a citizen of the State of Maryland and is not a citizen of the State of New York.

12. Pursuant to Plaintiff's Complaint (Exhibit "A", ¶¶ 8-12) by reason of Defendants' alleged negligence, recklessness and carelessness, Plaintiff was allegedly caused to sustain severe and permanent injuries, serious injuries, pain, shock and mental anguish, all of which is alleged to be permanent; Plaintiff has incurred and will continue to incur expenses for medical care and attention; Plaintiff has been unable to perform his normal activities and duties and has sustained losses therefrom.

13. Based on the alleged damages averments contained in the Complaint (Exhibit "A", ¶¶ 8-12), logically the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000) exclusive interest and costs as this case allegedly involves serious, severe permanent physical injuries leaving Plaintiff unable to perform normal activities.

14. This Honorable Court has original jurisdiction pursuant to 28 U.S.C. § 1332.

15. Since Plaintiff and Defendants are citizens of different states, this dispute involves controversies between citizens of different states and therefore is removable pursuant to 28 U.S.C. §1441.

16. Pursuant to 28 U.S.C. § 1446(a) this Notice of Removal is filed in the United

States District Court for the Southern District of New York, which is the District in which the State Court Action is pending.

17. This Notice of Removal is timely pursuant to 28 U.S.C. §1446(b) and 28 U.S.C. §1446(b)(3) as it was filed within thirty (30) days after Defendant received a copy of the initial pleading (original Complaint at Exhibit “A”) setting forth a claim for relief upon which the action or proceeding is based.

18. Defendant Burlington Coat Factory of Texas, Inc. will file on this date a copy of this Notice of Removal with the Clerk’s Office of the Supreme Court of the State of New York, County of Bronx as required by 28 U.S.C. § 1446(c).

19. Defendant Burlington Coat Factory of Texas, Inc. will on this date give written notice of the filing of this Notice of Removal to Plaintiff as required by 28 U.S.C. § 1446(c).

WHEREFORE, Defendant Burlington Coat Factory of Texas, Inc. respectfully requests that the above-entitled action now pending in the Supreme Court of the State of New York, County of New York, be removed therefrom to this Court.

SPECTOR GADON ROSEN VINCI P.C.

Dated: May 19, 2022

By: /s/ Randi A. Wolf
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FOR THE SOUTHERN DISTRICT OF NEW YORK**

JIMMY HARRIS,)	
)	
Plaintiff,)	C.A. No.
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vs.)	
)	
)	<u>CERTIFICATE OF SERVICE</u>
BURLINGTON COAT FACTORY and)	
URBAN EDGE PROPERTIES,)	
)	
Defendants)	

I hereby certify that on May 19, 2022 I served the foregoing Notice of Removal on all counsel of record by causing true and correct copies thereof to be sent via U.S. Mail., postage prepaid, addressed to the following:

Patrick D. Gatti, Esquire
Segal & Lax, PC
501 Fifth Avenue
Suite 2004
New York, NY 10017
Attorneys for Plaintiff

SPECTOR GADON ROSEN VINCI P.C.

Dated: May 19, 2022

By: Randi A. Wolf
Randi A. Wolf, Esquire